the defendant does not suggest that he is defending for or with the authority of the State of Gwalior. He must therefore account to his principal, and leave him to settle his affairs with Gwalior if there is anything to settle."

In the present case it is abundantly clear that the rents collected by the appellant from the inhabitants of 59 Wilkie Road came into his possession in his capacity as agent for the respondent and that no claim has been made upon him by the reversioners of the property, whose very identities seems to be unknown. In the circumstances he is bound to pay the amount collected less his remuneration, which in respect of each month is the difference between the total sum collected and $200, to the respondent.

For these reasons I would dismiss the appeal with costs.

Chua and **Winslow JJ.** concurred.

Appeal dismissed.

Solicitors: *Hilborne, Chung & Co.; L. A. J. Smith.*

LEE SOCK GOH v. STRAITS CABARET (1953) LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Wee Chong Jin C.J. (Singapore)) September 15, 1964]

[Singapore — Federal Court Civil Appeal No. 42 of 1964]

Landlord and tenant — Consent judgment for possession — Order for possession suspended for reasonable time before execution — Estoppel per rem judicatam.

Practice and Procedure — High Court — Power and jurisdiction of.

In this case the respondents had obtained a consent judgment in 1957 for possession of premises at Anson Road, Singapore, but the judgment provided that the order for possession shall not be enforced unless the rent for the premises was not paid. Subsequently as more than six years had elapsed from the date of the judgment, the respondents applied by summons in chambers for leave to proceed with the execution. The order for execution was issued ([1964] M.L.J. 299) and it was against this order that the appellant appealed. The principal ground of appeal was that the High Court had no power and no jurisdiction to give a judgment of the sort it did in 1957.

Held: the then Supreme Court in Singapore (of which the High Court was a part) had power to suspned an order for possession for a reasonable time before execution and therefore the order it made in 1957 was within its power and jurisdiction.

Cases referred to:—

(1) *Kok Hoong* v. *Leong Cheong Kwang Mines Ltd.* [1964] M.L.J. 49.

(2) *Jones* v. *Savery* [1951] 1 All E.R. 820.

FEDERAL COURT.

L. A. J. Smith for appellant.

Goh Heng Leong for respondents.

Thomson L.P. (delivering oral judgment): This is an appeal against a judgment of Mr. Justice Choor Singh relating to the possession of certain premises in Anson Road, Singapore.

The matter arose thus. In 1957 the landlords of the premises, who are the respondents to the present appeal, commenced proceedings for possession of the premises against the lessee who is the present appellant. Those proceedings were contested but with regard to the matters in contest it is only necessary here to observe that one of the grounds of defence pleaded was that the premises were rent-controlled. It is needless to follow the whole course of that action but in the event it terminated in a judgment for the then plaintiffs dated 17th July, 1957, which was made by consent. And I pause here to observe that the effect of that judgment was to create an estoppel *per rem judicatam* as between the parties on everything which was in issue on the pleadings. It is unnecessary to look for authority for that proposition beyond the judgment of the Privy Council in the case of *Kok Hoong* v. *Leong Cheong Kwang Mines Ltd.*.[1]

The terms of that judgment were unusual in the sense that I very much doubt if any of us here has previously seen a judgment in similar terms. The relevant portions read as follows:—

"....the plaintiffs do recover against the defendant possession of....the....premises....at....Anson Road, ...*AND IT IS ORDERED* that the defendant do give the plaintiffs possession of the....premises forthwith but provided that during the residue of the term of years created by the lease of the said premises made between the parties hereto and dated the 2nd day of March, 1954 such judgment and order for possession shall not be enforceable unless the rent for the said premises.... has not been paid by the....(due date)....in accordance with clause 6(c) of the said lease before the 14th day of that month, in which event the plaintiffs are to be at liberty to apply to the judge for leave to issue execution on this judgment...."

That is dated 17th July, 1957, and thereafter it would appear that the parties lived in a state as nearly approaching amity as was possible until on 9th April, 1964, the lease having expired the landlords were minded to execute the judgment of 17th July, 1957. That judgment was then over six years old and accordingly it was necessary, by reason of the rules of the High Court in Singapore, to apply to a judge by way of summons in chambers for leave to proceed with the execution. That course was taken. Such an application was made and an order for execution issued as prayed. It is against that order that the appellant (the tenant) has now appealed.

To my mind the appeal is without substance. Mr. Smith, for the appellant, with his usual candour, has made it clear that the sum and substance of his case is that the High Court had no power and no jurisdiction (I am not quite clear whether power or jurisdiction was in point but I have put it in the way most favourable to

the appellant) to give a judgment of the sort it did in 1957. It was, in effect, an order for possession suspended for what might be such an unusually long period as 7 years.

Mr. Smith, again with his usual candour, has admitted that there is no authority for his proposition in the sense that he cannot point to any statement in such terms by a competent judicial authority.

My own view is that not only is his proposition without foundation in principle but that such authority as there is is to the contrary. It seems clear that a court, particularly a court in which is vested the whole judicial power of the State, must necessarily have power to qualify and limit the operation of its judgments in the sort of way the court did in 1957 and support for that view is to be found in the English case of *Jones* v. *Savery* [2] which would appear to be the only reported case which is very much in point. That case, I should observe *in limine*, related to a stable which was premises which were outwith the scope of the United Kingdom Control of Rent Legislation which applies (as we have reminded ourselves so often in this court) only to dwelling houses. To that extent it is on all fours with the present case because, whatever be the truth of the matter, the position now is that by reason of the law of estoppel the appellant-tenant must accept that the premises here are outwith the scope of the Control of Rent Ordinance. And in the case of *Jones* v. *Savery* it was held that a county court judge had power in relation to non-rent-controlled premises to suspend an order for possession for a reasonable time before execution. It seems clear that if a county court, a court which is entirely the creature of statute has such a jurisdiction without being given it in express terms then *a fortiori* the English Supreme Court must have such jurisdiction for the English Court is the Queen's court, the court vested with the judicial power of the British Crown. And in 1957 the position was that the then Supreme Court in Singapore was vested with all the powers and jurisdiction of the Supreme Court in England, powers and jurisdiction which have now passed in part to this court and in part to the present High Court in Singapore.

In the circumstances it is impossible to accede to the argument that the Supreme Court of Singapore (of which the then High Court was a part) had no power to make the order that it did make on 16th July, 1957. If the court had power and if it had jurisdiction to make that order then beyond a peradventure on a clear construction of its wording (though nothing has in fact been argued to the contrary) there was power on an application for leave to enforce it to grant the application.

In my view, Mr. Justice Choor Singh was right and this appeal should be dismissed with costs.

Barakbah C.J. (Malaya) and Wee Chong Jin C.J. (Singapore) concurred.

Appeal dismissed.

Solicitors: *L. A. J. Smith; Allen & Gledhill.*

KOH v. KOH

[O.C.J. (Choor Singh J.) October 17, 1964]

[Singapore — Consolidated Suit No. 925 and 1373 of 1963]

Husband and wife — Separation deed — Termination — Offer of reconciliation — Whether refusal amounts to desertion — Maintenance — Acceptance of a lesser sum in satisfaction of the whole.

Contract — Consideration — Acceptance of lesser sum in satisfaction of larger sum as maintenance.

The plaintiff sought to recover the sum of $5,141.24 alleged to be due as maintenance under a deed of separation. The defendant pleaded three defences in the alternative: (1) he had made an offer to be reconciled and to resume cohabitation with the wife and as she had refused it, she should be deemed to have deserted him and was therefore not entitled to maintenance; (2) the parties had entered into a new agreement in February 1963 under which the plaintiff was to receive from the clerk of the legislative assembly the monthly allowance of $500 due to the defendant as member of the Singapore Legislative Assembly and this monthly allowance was to be paid to the plaintiff in satisfaction and discharge of the defendant's liabilities under the separation deed; and (3) the payments to be made under the deed had been varied by the new agreement to the extent that the defendant would pay $500 *per mensem* only until such time as his circumstances permitted him to pay $850 *per mensem* as provided in the deed.

Held: (1) there was no evidence that the wife had any intention of repudiating the deed of separation or that the husband was putting an end to the deed and as the deed provided for the parties to live separately at all future times, the husband had in the circumstances failed to prove desertion on the part of the plaintiff;

(2) the new arrangement arrived at in February 1963 was an agreement to vary the terms of the separation deed, the variation being that the defendant would henceforth pay the sum of $500 *per mensem* and no more until his financial circumstances permitted him to pay $850 *per mensem* as provided in the deed;

(3) the letter authorising the clerk of the legislative assembly to pay to the plaintiff's solicitors the sum of $500 a month was an independent benefit and the letter therefore constituted a good and valuable consideration for the plaintiff's agreement to accept such payment in lieu of the larger sum she was entitled to under the deed of separation.

Cases referred to:—

(1) *Pardy* v. *Pardy* [1939] 3 All E.R. 779.

(2) *Bosley* v. *Bosley* [1958] 2 All E.R. 167.

(3) *Hall* v. *Hall* [1960] 1 All E.R. 91.

(4) *Pinnel's Case* 5 Rep. 117a.

(5) *Foakes* v. *Beer* (1884) 9 App. Cas. 605.